

# context+

November 23, 1998

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Dear Ted,

Thank you for your letter of November 13, which arrived today. Since I did not receive your comments on the contract (November 1) until Friday, I will respond to both letters below.

I understand your hesitance when faced with the contract I sent to you. It is standard procedure for the author to show contracts to legal counsel before signing, as there may be language that you will not agree to after the legalese has been parsed down to the bottom line. I can only tell you that I have endeavored to anticipate such instances, and, with that in mind, was careful to eliminate as many instances of language you would find unacceptable from the agreement. The hope was that we would be able to cross out the remaining sticking points (as I am flexible in your case) so that a signed agreement could be generated. I will address individual points in the last paragraphs of this letter.

Your query regarding income tax is, I think, satisfactorily addressed in 9 and 10 v. of the contract. Those clauses create a binding agreement from which you cannot directly profit. All proceeds due to the author will be placed in an escrow account. The only way in which you could be exposed to the IRS would be if Context Books were to make funds from this account payable to you. I will address these paragraphs further in the responses to your comments on the contract.

Thank you very much for the changes you alerted me to. I will incorporate these into the appropriate sections of *Truth versus Lies*. Thank you also for pointing out the typo. I also noticed a typo on the first page, second paragraph of Chapter I: "extravert" should be "extrovert."

I do not know for sure what to say about the unverifiable information you mentioned. I can only imagine that undocumented evidence is not welcome according to your mode of argumentation. I of course do not know who you are talking about, but I find this informer to be somewhat irritating, so I can well understand why you have asked him to keep all future intelligence regarding your trial to himself. Without knowing what the information is, I can only say the obvious. It should be used if it further demonstrates the manner in which you were misrepresented and did not receive a fair trial.

However, you say his information is indefinite, which I take to mean that the truth of what he has said is questionable, or that what he claims about (Qb) Investigator Reports is vague. Is it possible that this person is inventing things to curry favor with you? In my experience, indefinite situations are merely half-understood, or poorly understood situations, or lies. Here is what I would do: Add the note you dated November 1 along with a *paraphrasis* or direct quotation of the relevant passage from his correspondence to you. If you cannot do this (i.e., paraphrase), then I would not say anything. Also: Your note sounds as tentative as this situation. I would write: "...may tend to cast doubt..." instead of "...possibly may tend to cast some doubt..." since it either does or it doesn't, and the former sounds more authoritative. I do understand that what you wrote was a first draft, as you said at the end of your letter.

Thank you very much for the photographs. I will of course send them back to you when a decision had been made as to which images to use, and when the chosen images have been reproduced for inclusion in *Truth versus Lies* respectively. I was particularly drawn to the photographed example of petty vandalism on the birch tree, which is, as they say, worth a thousand words. I also liked the picture of your choke cherry bush, which taught me something I had not known about winning the battle against marauding herbivores and/or clumsy visitors. Any other photographs you would like to have in your book should be forwarded to me. I would very much like to see the picture of Baldy Mountain that you mentioned.

I was glad to find that some of my comments on the §2255 motion were met with some approbation from you. You can be sure of my secrecy regarding the motion, although you should know that it is an open topic of discussion between Gary Greenberg, Mike Mello, and me. I have discussed it with no one else. As for my comment on the heading "(Mis)representation", my opinion is based on a rather strong dislike of French-inspired semioticians, who would be wont to use such typographical indications of opinion rather than just stating the problem outright. Misrepresent is a word. Having said this, the motion is about the poor representation with which you were forced to contend and the vagaries of the Federal legal system. I therefore prefer a factual account of that situation, (i.e., the wrongheaded manner in which you were represented). To write "The Representation" can only be about how you were misrepresented, but it sounds more neutral, and you do not want to the judge to go on the defense. It is a small point that obviously lies outside of my field of knowledge, and which may be written out by your new lawyers (information from Mike Mello and Gary Greenberg). I do agree that it needs radical rewriting. The footnote question is not something I will pretend to be qualified to address.

My suggestion that you file the motion *pro se*, was perhaps over-enthusiastic, and unwise. It is an option if the occasion should present itself, since you would probably do it very well. I trust the occasion will not arise.

The timing of the book will be decided in part by your lawyers. If they want to file before the book comes out, I am fine with that. I can think of publishing arguments for either scenario, and I am not worried about the sales impact of lay-down (pub. date) and filing the motion. As soon as you know when the probable date of filing will be, I trust you to let me know so that I can make

the proper arrangements. Also: I am pretty sure that I can get first serial in a major magazine, which may be a good way to announce the book, since it will get a lot of publicity that way.

As for our copyright issue, I hope I can set your mind at ease. It does not look like it will be a major issue. Soward is not hugely knowledgeable about copyright law, and his remarks on this matter are flawed. The argument stating that the letters must be viewed as a collection in order to be considered "of value" is shaky, and will not be interpreted necessarily in our favor were someone to file suit. Copyright law most certainly does allow the use of personal letters to defend one's reputation. The only thing at issue is relevance. You are only allowed to use sections that are of direct relevance to your argument. My lawyer's name is David Korzenik. He is a professor of copyright law at Cordoza School of Law. He was legal counsel for *Spy Magazine*, which frequently got away with instances of copyright infringement that many thought were impossible and which without doubt did represent copyright infringement. Korzenik is very good, and is considered "top notch" in his field.

At this point, I think we are okay as far as copyright goes, and there is nothing in *Truth versus Lies* that would leave it open to a law suit (i.e., there is nothing that might require a change that would in any manner compromise your style of argumentation or the argument's force of suasion). I say this because, if Korzenik does find sections of cited material that are not clearly relevant to the argument, the worst that will happen is that he will ask you to paraphrase, or omit points of possible contention.

It sounds like Soward did not have the power of his conviction when faced with the task of approaching your brother for rights. He should have been contacted when the time was favorable to a positive response. But it is not certain that his permission will be needed, since you are allowed to use his letters as they pertain to the defense of your reputation. You did, after all, write, "the purpose of publishing the material is to prove that my brother has lied about me and to show his motives." Eiseman's information about "expression" is not entirely correct. Fair use law, as you know, is vague. We must be sure to tip the scales of "justice" on the safe side, so that any judgment on copyright infringement would be in favor of the defendant. But I think we are in the clear. A legal read will be officially done (i.e., on the clock) after the contract is signed, but I suspect that Korzenik has already done it.

Regarding your mother and brother, I will do just as you say regarding contact with them. I think it may be wise to let your brother know, further down the line, that a book is being published. I can couch this information in non-alarmist terms. I hope the suggestion does not irritate you (as I have said I make no moves without your go-ahead). But since there is the chance that proceeds from *Truth versus Lies* will accrue to the victims, it seems possible that he will agree to grant all rights. He announced today that he will sell the rights to a book and film to help raise money, although it is not clear if this money is intended to defray his own legal expenses, those of the victims, or to pay wrongful death claims against you. I have attached the news release. I will do everything in my power to eclipse the sales of any such book were it ever realized, of that you can rest assured.

What follows are point by point responses to your comments on the contract for *Truth versus Lies*:

1. "I consider myself a resident of Montana" — We will be able to amend this, unless the federal prison system considers you to be a resident of Florence, CO. Can you check?
2. "Section 1 a.i. would seem to give publisher the right to publish immediately condensed or abridged versions" — That is not my understanding. To make it clear, I suggest we strike "whether now or" where it occurs, and then add "after the complete and original version has been available to the public for one year;" after "(referred to as Electronic Books)".
3. "...readers who have already seen the 'digest' form may not read the complete version..." — It would be madness for me to publish the book in serial form. This is a provision that is standard in agreements, since it allows for the option to publish a work serially in extraordinary circumstances. I will not do this. Change as follows: "License portions of the work for periodical publication (first serial) prior to book publication." The next clause would read: "License portions of the work for periodical publication (second serial) after book publication."
4. Filmstrips: It is understood that this sort of licensing would not occur before publication unless we were talking about very short passages (a matter of sentences) for promotional purposes. You may add the following to the end of this clause: "after book publication, except short excerpts for the purpose of promoting the sales of the work."
5. Electronic versions: These will not compete with the book version, since they are still only in prototype form (i.e., electronic pocket reading devices). This is a clause that pertains to the book after its publication. To be sure, we might add: "after the complete and original version has been available to the public for one year;" but the electronic rights are a forward-looking clause that point toward as of yet unrealized advances in the aforementioned technology.
6. Use of Image — Yes, only in connection to the promotion of *Truth versus Lies*.
7. Audio books: These do not compete with printed books either. It is not even clear that the people who buy books on tape are literate, and it is clear that the demography is distinct from the book-buying segment of the population. I suggest we leave this as is, since it could potentially expand your audience. The chances of publishing an audio book within 6 months are small. So, I would be willing to add "after six months of book publication" at the conclusion of the first sentence of 1 e. ending with the word "readers." This would, however, prove to be disadvantageous were your book to sell quickly, since publicity and word-of-mouth would make audio "readers" want to acquire it. We would, in this instance, miss out on the opportunity to expand your audience.
8. Typographical error noted.

9. As I hope that I argued cogently in the above, copyright is not going to be a problem. I think we work well together in the instances where a legal edit is indicated. I hope at this point you have the impression that I am 100% on your side to create the best possible book that is in keeping with authorial intent. In addition, it is my impression (and hope) that we will not need to make many (if any) changes. I will acquire permission where that is required, since it is far easier for me to do, and you have more important things to pursue.
10. "Obviously I can't represent that I am the sole owner of the copyright" — Yes, you can. You are the author of the book and have not given anyone else the right to publish it. The rights belong to you. When the time comes, I will file the copyright for you, as is standard procedure in publishing. It is a courtesy the publisher is expected to extend to the author, and is much easier for the publisher to do, since it is done frequently. Your possession of the copyright does not mean that money generated by sales will accrue to you. The escrow account will be established and then all parties with a legitimate claim to those funds, including you and your lawyers, will have to duke it out. A court will have to tell me to whom and for how much before I sign any check drawn on that escrow account.
11. Misprint noted.
12. It is the standard language to say, "the Author shall hold the Publisher harmless." As far as I know, it means that I can defend myself if sued by anyone and that you will not hinder my doing so, or direct the manner in which a defense is mounted.
13. Commas will be inserted.
14. "The term 'unreasonably' is so vague that it is not clear to me what, if any, protection this gives me against changes in the manuscript" — This is the standard term, and it is vague in favor of the publisher. It is better than no adverb at all, but there could be some common ground here yet to be reached. This clause refers only to the subtitle. I have not thought of one (not for lack of trying). If you think that a subtitle is unnecessary, then strike from "A subtitle" to "delayed."
15. See No.9.
16. "As far as payments to alleged victims" — The escrow account will probably sit collecting interest for quite some time, since there will probably be many conflicting claims on the money which will have to be sorted out by a judge.
17. "During" has been inserted as indicated. Thank you.
18. Option for next work — I understand your reservations regarding giving me first option on your next book-length work. I would like to assure you that this is a common clause and it is not entirely binding. It figures by way of an industry-wide courtesy. You will notice that this

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paragraph states that: "If after thirty days the parties are unable in good faith to arrive at a mutually satisfactory agreement for such publication, the Author shall be free to submit his manuscript elsewhere, provided, however, that he shall not enter into a contract for the publication of such manuscript with any other publisher upon terms less favorable..." I realize that in your case, "terms less favorable" will be a moot point, and that, if you decided to go with another publisher, your decision would be based on our relationship *per se*. I cannot guarantee that we will continue to get along, but neither can I perceive a reason why we should not continue to do so. I will leave it up to you to decide. I would prefer to have the option, but strike it if you will.

19. This clause does address the objection you raised in connection to paragraph 6. That paragraph, you will recall, only makes comment on the subtitle. The text is addressed by paragraph 26, and will not be changed without your express consent, as indicated there.

If the above responses to your comments on the agreement were acceptable, the expedient thing to do (after your lawyers get back to you) would be to make a copy of the contract. We can use it to finalize the agreement. If you referenced your copy with the same numbers added to mine, you would have to make another copy to preserve the original for your records, then use correction liquid to erase the reference numbers on that copy, and make two clean, unmarked copies for signing. I can also generate new fair copies if you find it preferable. I make this suggestion with respect to time. As you probably know, the only marks on the contracts should be where you have struck text or added text, and in such instances you will need to initial each place where alterations to the contract have occurred to indicate that you approve of them. If we are shooting for a January lay-down, time will be of the essence.

I was glad to hear that you approved of Gary Greenberg's introduction to Michael Mello's book. I think it is the best thing to have been written to date. He says much that has been bothering me about the public understanding of your situation, as well as the common understanding of the Unabomber. He has set the ball in motion for a much-needed revision of that understanding of your situation, and how the Unabomber figures in world history, which is quite a contribution to posterity. I have spoken to him on the phone, and now there are two excellent people to whom you have introduced me. I must express my gratitude. It is generous of you to have introduced us to each other. You will be happy to hear that Mike has agreed to let Context Books publish his book. I am curious to know what you thought of the title change.

As ever, I hope this note finds you well, and that your work is progressing to your satisfaction.

My best,

Beau.